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SUBJECT: BELARUS ELECTION LAW AMENDMENTS: AN EXAMPLE OF NON-INCLUSIVE DEMOCRACY

REF: MINSK 413

¶1. Summary. The GOB is in the final stages of amending Belarus' electoral law in anticipation of local elections next April and presidential polls in 2011. While Lukashenka and other regime officials have publicly addressed proposed changes to the code, the amendment process has lacked transparency, offered no mechanism for interactive input by the OSCE, NGOs or opposition parties, and did not invite open public debate or discussion during parliamentary consideration. Amendments emerged in final legislative form December 18, end of the current Belarus parliamentary session. Official announcement of a local (municipal) election date will follow, with the GOB looking at a late April timeframe. Lukashenka is expected to issue an edict by mid-January giving the amendments force of law. GOB officials have said the new code will remain in force and not be amended further before the 2011 presidential election. Despite the non-democratic process and limited authority of local officials, the political opposition believes it is important to participate in the process with the goal of winning seats. Seats on municipal councils can serve as a legal platform for reaching the public and influencing local authorities. Nevertheless, a cooperative effort by all opposition forces can field, by their own estimates, a maximum of 300 candidates for the approximately 24,000 contested local positions nationwide. End summary.

MINOR IMPROVEMENTS IN SOME CASES, BUT NO FUNDAMENTAL CHANGE

¶2. The election cycle comes against a backdrop of economic challenges for Belarus in 2009, including a drop in exports and foreign reserves, budgetary pressures, and reliance on foreign borrowing, especially from the IMF. The regime has been mindful of western concerns and would like to have its amended law recognized as a step toward establishing international election norms. The Belarus Central Election Commission (CEC) told us they have adopted 90 percent of the OSCE's recommendations put forth in the spring of 2009; critics view the revisions as largely cosmetic and insufficient to ensure free elections in Belarus. Amendments that passed a second parliamentary reading December 11 (reftel) are expected to remain in force, with only technical modifications. Changes include minor improvements in local election board membership, candidate selection procedures, the appeals process and ballot security. Tight legal restrictions on public gatherings will be eased somewhat during the campaign period, but venues for campaigning will be determined by authorities, a requirement that could force opposition candidates to hold rallies in locations inconvenient for them and prospective voters.

¶3. Political party representatives on local election commissions will no longer be required to hold formal membership in the party, a step that could offer some added flexibility for opposition groups. One-third of local election board members will be drawn from political parties and NGOs, while no more than one-third may concurrently hold positions as public officials, moves advertised as a way to broaden public participation and curb both nepotism and executive control at the local level. Parties will be allowed to field candidates in election districts, even where the party has not established a registered office. Local election candidates themselves may seek a place on the ballot either through nomination by a party or independently by gaining a required number of signatures from citizens of the district. There will no longer be a required minimum percentage level of participation in voting districts for results to count, a step that could keep authorities from using a low turnout in certain districts as a pretext for voiding results. A controversial early voting period of five days preceding election day, when up to 40 percent of voters cast ballots, will remain part of the new law. However, the CEC claims there will be added security to safeguard the early votes, with ballot boxes sealed by local boards at the end of each voting day.

¶4. Election law revisions fall short in several key areas. First, and most importantly, the GOB has reneged on its initial public commitment to allow observers a seat at the table as ballot boxes are opened and votes tabulated by election boards. When votes are counted, observers at polling stations will be kept at a distance from local commission members, not close enough to verify visually the accuracy of the vote count or monitor on-the-spot any disputes or irregularities. Second, the CEC has rejected use of transparent ballot boxes. Third, the

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provision for one-third of the members of local election boards to be drawn from political parties and NGOs does not guarantee that opposition views will be represented. Critics fear that seats could be filled by compliant, pro-regime organizations under the guise of non-governmental groups, squeezing out participation by genuine independents. In addition, opposition groups had sought an end to early voting, arguing that balloting over an extended period of time increases the risk of fraud and manipulation.

POLITICAL OPPOSITION SKEPTICAL BUT WILL COMPETE IN ELECTIONS

¶5. At a broader level, critics in Belarus remain skeptical and doubt that amendments to the election law will yield progress toward free and open elections. Political analyst Valery Karbalevich told us the regime decided to enact changes to the election code under pressure from the West, especially the EU and OSCE, but he said that problems with elections in Belarus are the result of the way laws are implemented, not how they are written. An honest election could be held under existing law, and a fraudulent election carried out under the new code. Dismissive of the importance of local elections, Karbalevich said that when compared to executive authority in Belarus, the public perceives municipal assemblies as institutionally weak and lacking independent decision-making power. Without much at stake, local polls are unlikely to generate enthusiasm from voters in April or shift the status quo. In addition, he does not expect local businesses or donors from inside Belarus to step forward to fund independent or opposition candidates, leaving anti-regime elements to look toward outside sources for support.

¶6. Other critics agree that Lukashenka will maintain a firm grip on the process and point out that key improvements recommended and agreed to earlier, especially for a closer monitoring of the vote count, have not been adopted. Leu Marholin of the United Civil Party told us that when Belarus began to look West, the opposition's principal task was to

promote election reforms. He sees local elections as a test that will reveal how the government plans to approach the presidential election in 2011. His party will attempt to recruit people for seats on election commissions in larger oblasts and encourage the GOB to accept ODIHR monitors, a proposal the CEC has already rejected. Any pressure on the part of authorities to keep opposition recruits off election boards for April's local polls will be read as an important signal of intent as the country looks ahead to the presidential election. Marholin would like to see the EU establish benchmarks that would include incentives by the West in return for tangible GOB progress in election transparency. He reasoned that if incentives proved unsuccessful, failure to meet benchmark goals would highlight shortcomings in the election process.

17. Opponents of the regime hope to benefit from what they see as a growing "pro-European" outlook by the Belarus public and signs that the GOB wants better ties with the West. Viktor Karniayenka of the For Freedom movement told us it would be a mistake for the opposition to boycott local elections. Despite the obstacles, including the lack of an independent judicial system upholding electoral law, he expects it will be somewhat easier to propose candidates, participate in local election commissions, and meet with voters. The goal should be to win seats, not just to show that the process is non-democratic. Seats on municipal councils can serve as a platform for reaching the public and influencing local authorities. He supports cooperation among "democratic forces" and said factions should be willing to step aside in favor of well qualified candidates from other opposition groups. In Karniayenka's view, the opposition will aim to field a maximum of 300 candidates nationwide (out of approximately 24,000 total seats) focusing on larger oblasts and Minsk. He hopes that, if elected, independent council members would look for areas of cooperation with the government, especially on issues related to promoting integration with Europe.

18. The basic impediment to a free and fair election process reaches well beyond the new election code amendments. Without recourse to independent courts and administrative agencies fraud cannot be challenged effectively. Officials at the Belarus-Helsinki Committee (BHC) told us that fraud pervades the system because each element up and down the line in the Belarus power structure, including the judiciary and executive

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authority, is under pressure to ensure pro-government outcomes. Real independence at any point in the regime's vertical administrative structure would undermine the entire system. Modest improvements in the election law and GOB interest in fostering a perception of transparency may serve as a check on more overt forms of fraud, but the BHC expects to see a shift toward "sophisticated manipulation" in order to achieve desired results. Early voting and portable voting provisions are areas especially susceptible to such manipulation. Also, according to BHC officials, authorities will mobilize state enterprise employees to turn out on election day and provide massive support for candidates loyal to the regime. BHC chair Aleh Hulak stated flatly that Belarus does not have the conditions for democratic elections. At the same time, he added paradoxically that while the public does not see elections as a means for change, a substantial majority (60%) of Belarusians view their elections as credible, a perception that continues to provide support and running room for the regime.

COMMENT

19. Comment. Despite the problems, local elections can offer an opportunity for aspiring politicians outside the regime to gain seats on local councils. Once in public office, they will have a legal platform to openly discuss matters of governance, an important step if Belarus is to progress in the future. The Belarus opposition remains weak and divided, but even in the face of modest expectations, there are early positive signs that

regime opponents are prepared to take part, cooperate in fielding candidates, and seek places on local election boards. However, Lukashenka's association in the public's mind with positive steps toward Europe will most likely mitigate this as a factor in the oppositions favor despite their hopes to the contrary.

¶10. Comment continued: GOB actions through the amendment process, campaign period, election, and vote count will stand as a gauge for regime intentions as it seeks to maintain control of domestic affairs, while weighing possibilities for moving along a track toward resetting ties with the West. However, the latter as a policy priority has in the last month come into question as GOB increasingly believes it has weathered the economic crisis, and through the proposed single economic space with Russia and Kazakhstan found a way to once again obtain oil and gas at subsidized rates and unfettered access to the Russian market for its export based economy. End comment.
SCANLAN